

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456
Civil Action No. 01-12257-PBS
Subcategory No: 03-10643

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

City of New York v. Abbott Labs., et al.
(S.D.N.Y. No. 04-CV-06054)
County of Suffolk v. Abbott Labs., et al.
(E.D.N.Y. No. 03-CV-229)
County of Westchester v. Abbott Labs., et al.
(S.D.N.Y. No. 03-CV-6178)
County of Rockland v. Abbott Labs., et al.
(S.D.N.Y. No. 03-CV-7055)
County of Dutchess v. Abbott Labs., et al.
(S.D.N.Y. No. 05-CV-06458)
County of Putnam v. Abbott Labs., et al.
(S.D.N.Y. No. 05-CV-04740)
County of Washington v. Abbott Labs., et al.
(N.D.N.Y. No. 05-CV-00408)
County of Rensselaer v. Abbott Labs., et al.
(N.D.N.Y. No. 05-CV-00422)
County of Albany v. Abbott Labs., et al.
(N.D.N.Y. No. 05-CV-00425)

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**DEFENDANTS' NOTICE OF INTENT TO FILE A RESPONSE TO THE
SUPPLEMENTAL BRIEF OF THE UNITED STATES ON THE FEDERAL UPPER
LIMIT**

<i>County of Warren v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00468))
<i>County of Greene v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00474))
<i>County of Saratoga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00478))
<i>County of Columbia v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00867))
<i>Essex County v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00878))
<i>County of Chenango v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00354))
<i>County of Broome v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00456))
<i>County of Onondaga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00088))
<i>County of Tompkins v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00397))
<i>County of Cayuga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00423))
<i>County of Madison v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00714))
<i>County of Cortland v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00881))
<i>County of Herkimer v. Abbott Labs. et al.</i>)
(N.D.N.Y. No. 05-CV-00415))
<i>County of Oneida v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00489))
<i>County of Fulton v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00519))
<i>County of St. Lawrence v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00479))
<i>County of Jefferson v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00715))
<i>County of Lewis v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00839))
<i>County of Chautauqua v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06204))
<i>County of Allegany v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06231))
<i>County of Cattaraugus v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06242))
<i>County of Genesee v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06206))
<i>County of Wayne v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06138))

County of Monroe v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06148))
County of Yates v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06172))
County of Niagara v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06296))
County of Seneca v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06370))
County of Orleans v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06371))
County of Ontario v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06373))
County of Schuyler v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06387))
County of Steuben v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06223))
County of Chemung v. Abbott Labs., et al.)
(W.D.N.Y. No. 05-CV-06744))
AND)
County of Nassau v. Abbott Labs., et al.)
(E.D.N.Y. No. 04-CV-5126))

Defendants hereby provide notice to the Court of their intention to file a short response to the Supplemental Brief of the United States on the Federal Upper Limit (Dkt. 6693), filed last Wednesday, November 25, 2009, on the afternoon before Thanksgiving and more than a full five months after oral argument on the pending FUL summary judgment motion. Defendants respectfully request that the Court delay any ruling on the pending motion until it has had an opportunity to review defendants' submission. In their submission, defendants will argue that certain key concessions set forth in the Department of Justice's filing confirm that they are entitled to summary judgment in their favor. Defendant expect to be in a position to make their filing no later than Wednesday, December 9, 2009, fourteen days after the filing of the supplemental brief, as is afforded by Local Rule 7.1(B)(2) to respond to a motion.

Respectfully submitted,

/s/ John P. Bueker

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Dated: December 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2009, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ John P. Bueker
John P. Bueker